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-Notice-

January 20, 2010

Persons Who Are Parties of Record

Re: Special Exception Application SPX2009-00378
Victory Housing Inc. 209 Monroe Street, Rockville, Maryland 20850

To Whom It May Concern:

The City of Rockville Board of Appeals has adopted the attached Amended Decision, approving Special Exception Application SPX2009-00378.

The Board adopted its original Decision in this matter on January 9, 2010. A technical error was discovered prior to mailing the original Decision to all interested parties. Thus, an Amended Decision was adopted by the Board of Appeals to correct Condition #17 of the approval. The language at issue changed as follows:

#17. The roof height shall be 39 feet or less, measured from the street grade elevation of Monroe Street ~~elevation at the center~~ opposite the middle of the front of the building to the ~~mean height of the highest roof section~~ highest point of the roof surface of the flat roof.

In addition, corrections were made to the signature lines of the Board Members to reflect that Alan Sternstein was the Chair of the Board at the time the decision was adopted.

This Notice is being issued in accordance with Section 25.05.06 of the City's Zoning Ordinance. All reconsideration rights and rehearing rights pursuant to the Board's Rules of Procedure run from the date of this notice. All appeals initiated in accordance with Title 7, Chapter 200 of the Maryland rules, run from the date of this notice.

Cordially,

R. James Wasilak
R. James Wasilak, AICP
Chief of Planning

/cdc
Attachment

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IN THE MATTER OF THE APPLICATION
OF VICTORY HOUSING, INC.,
FOR A SPECIAL EXCEPTION
TO CONSTRUCT AND OPERATE
AN 86-UNIT APARTMENT
BUILDING FOR INDEPENDENT
ELDERLY RESIDENTS

SPECIAL EXCEPTION
APPLICATION SPX2009-00378

BOARD OF APPEALS AMENDED DECISION

BACKGROUND

On June 4, 2009, the law firm of Miller, Miller, and Canby, on behalf of Victory Housing, Inc. (known herein as the applicant), submitted an application in accordance with Section 25.07.02 of the City of Rockville Zoning Ordinance for Special Exception SPX2009-00378. The applicant has entered into an Option to Lease agreement with Montgomery County Government, the owner of the properties subject to the special exception request. The properties are to be developed for use and operation of an 86-unit senior housing facility for independent elderly residents. Three (3) full-time employees will staff the multifamily building. The site is zoned Mixed Use Transition (MXT).

The subject property is bordered by Maryland Avenue on the west, Fleet Street on the north, Monroe Street on the east, and an unimproved public right-of-way (known as Mount Vernon Place) running between Maryland Avenue and Monroe Street on the south. The site is bounded on the west and north by City and County governmental land uses, to the east by office, institutional and single-family detached residential land uses, and to the south by attached single-family dwelling units, known as the Courthouse Walk townhouse development.

PLANNING COMMISSION RECOMMENDATION

On August 4, 2009, the City of Rockville Department of Community Planning and Development Services issued a Staff Report, which provided an assessment of the land use request and its conformance with applicable requirements of the Zoning Ordinance and other laws relevant to the proposed special exception request. Thereafter, at its meeting on August 12, 2009, the City of Rockville Planning Commission reviewed and considered the subject application request. After much discussion, the Commission concluded its discussion on the request and voted unanimously to recommend that the Special Exception use be approved by the Board of Appeals, subject to the conditions referenced in the staff report. The Commission further made the following recommendations to the Board of Appeals: 1) that Rockville residents be given preference as tenants of the proposed senior housing complex; 2) that staff clarify site, height, and layback measurements; and 3) that the amount of on-site parking be studied extensively, as the applicant's proposal substantially exceeds the required number of parking spaces.

BOARD OF APPEALS HEARINGS

On September 12, 2009, this matter came before the Board of Appeals for a public hearing, at which time testimony and evidence were presented by the applicant and persons supporting and opposing the Special Exception request. After considerable testimony, the Board voted to continue its public hearing on this matter to the next regularly scheduled meeting of October 3, 2009. The Board also voted to leave the public record open for two weeks (through September 28, 2009), to allow for the submission of additional information. The Board specifically requested the applicant conduct a balloon test that would illustrate the height of the proposed building, the results of which and comments on which the Board agreed to accept after the September 28 date for additional submissions. The Board also requested the applicant provide an explanation of the extent to which the roofline of the building could be lowered, without compromising capacity but disregarding design wishes. The Board also sought an explanation of the costs of such a redesign. The Board agreed that the continuation of the public hearing would be limited to testimony regarding the balloon test, redesign of the roofline, and closing arguments.

Following the September public hearing, the Board received a request to extend the date to close the public record and a request to reschedule the time of day for the October continuation of the public hearing. After considering both requests, the Board decided to postpone the October 3 meeting until the November 7, 2009. The Board further agreed that the public record would remain open until October 16, 2009 for submission of information regarding possible redesign of the roofline of the building and that the public record would remain open until October 23, 2009 for submission of the results of and comments on the balloon test. In addition, the Board requested a memo from staff to explain how height is measured.

At its November 7, 2009 session, the Board continued its public hearing of the special exception request, to receive and consider additional information that it requested at its September 12 meeting. Specifically, at the November public hearing, the applicant and its consultants presented an overview of the balloon test that was conducted on October 21, followed by presentations on possible redesign of the proposed building's roofline. During the applicant's presentation and discussion, respective Board members asked a number of questions of both the applicant and staff. After the applicant's supplemental presentation, the Board heard testimony and considered additional evidence from neighboring residents in opposition to the Special Exception request. These residents presented their view of the balloon test and options for lowering the height of the building. The Board also heard testimony from residents supporting the project.

After hearing and considering all of the evidence and testimony provided, the Board of Appeals entered into a public work-session to discuss and decide the request. At the conclusion of the Board's work session on November 7, 2009, the Board voted unanimously (3 to 0) to direct staff to prepare a draft written decision and opinion,

tentatively approving the Special Exception, subject to certain conditions. However, it was the decision of the Board that the final decision in this matter would be delayed pending development and review of building plans and elevation drawings showing (i) the proposed building's roof line reduced by five (5) feet and (ii) building plans and elevation drawings showing the proposed building's roof designed as a flat roof. The applicant was directed to submit these additional drawings to city staff and Norman Knopf, attorney representing the neighboring property owners opposing the project in a timely manner, ready for the Board's review and consideration at its December 5, 2009 meeting. The applicant made these submissions and alternative proposals, which the Board considered at its December 5 meeting, in rendering its final decision, now set forth in this opinion.

PROPERTY DESCRIPTION

The site contains a collection of deeded properties, owned by Montgomery County Government, located within the Rockville Heights subdivision. The properties collectively total 3.47 acres (151,197 square feet) and are zoned for Mixed Use Transition (MXT) land usage. There are five houses currently located near the subject site, which make up the Rockville Heights Historic District, four that front Fleet Street and one other facing onto Maryland Avenue. The site also contains four other houses that front Monroe Street but are not located within the Historic District.

A July 16, 2009 Historic District Staff Report describes the Rockville Heights Historic District as an intact collection of early 20th century residential architecture of varying styles. The district borders the Town Center and is reminiscent of the small town land use patterns that characterized Rockville's environment prior to WWII. The Rockville Heights Historic District is located at the northern end of the Rockville Heights subdivision, platted in 1890. Homes date from 1904 to 1936, and together, they present an early 20th century streetscape, reflecting the early residential character of this part of Rockville, where commercial, office and governmental uses now dominate. The dwelling structures and accompanying properties were acquired by the County in the 1960s and have been used for offices.

In addition to the noted structures that are located on the subject site, the 3.47-acre site contains approximately 1.45 acres of forest, containing an array of mature trees, shrubs, and hedges, and flowering and non-flowering plants, wide-ranging in species and size. The site's topography ranges from relatively flat to gradual and pronounced sloping. The surface grades, however, in and around the dwellings located along Monroe Street, Fleet Street, and on Maryland Avenue are relatively flat. The site surface grades located along all street frontages are somewhat higher than those that make up the overall site.

TESTIMONY AND EVIDENCE IN SUPPORT OF APPLICATION

Victory Housing Inc. proposes to develop and operate an 86-unit senior housing facility for independent elderly residents in the City, to be known as "Victory Court". At the

initial September 12, 2009 public hearing, the applicant's attorney, Jody Kline described various aspects of the planned use and its operation.

The four dwellings now located on Monroe Street would be razed and those located on Fleet Street and Maryland Avenue located in the Rockville Heights Historic District, would remain. Although the dwellings, which are located within the Historic District, are shown on the site development plans submitted with the subject special exception request, they are not included in the special exception request land use proposal.

As proposed, the senior housing complex would have had a roofline approximately 47 feet tall and would have consisted of four (4) levels, i.e., a basement level and first, second, and third floors. The facility will contain 48 one-bedroom living units and 38 two-bedroom living units. The senior housing amenities will be located on the ground level and include a community room with a small kitchen, a living room, television room, arts & crafts room, computer room, exercise room, and a wellness center. Residents will have access to a landscaped courtyard and outdoor seating area.

The building will be located somewhat in the center of the site, with vehicular access onto Monroe Street. The front building entrance will be oriented facing Monroe Street at an angle. The building will be set back approximately 31 feet from the site's Monroe Street (eastern) property line, 37 feet from the site's current Mount Vernon Place (unimproved public right-of-way) (southern) property line, 180 feet from the site's Maryland Avenue (western) property line, and 59 feet from the northern property line, which is the rear yard property line of the abutting historic homes located within the Historic District.

During the September 12 public hearing, Mr. Kline noted that in an effort to address several of the concerns raised by the Planning Commission in August, the applicant had revised the proposed site plans, including elimination of a twelve (12) space parking lot located between Lot three (3) and Lot one (1), creation of an emergency access lane onto Maryland Avenue, and modification of the proposed Forest Conservation area.

The property owner, in conjunction with the applicant, also filed a "preliminary subdivision plan" (PLT2009-00498) and a "street closing and abandonment application" (SCA2006-00097). The referenced subdivision plan is pending action by the Planning Commission. The referenced street closing and abandonment application was approved by the Mayor and City Council and granted via adoption of Ordinance No. 30-09 on October 26, 2009. A copy of this Ordinance has been included in the record. Under the preliminary subdivision plan, the County-owned properties which now make up the site project area would be subdivided into seven new record lots, which is consistent with the proposed lots illustrated on the special exception site plan. The applicant is required to obtain both a preliminary subdivision plan and final record plat approval.

With regard to the Street Closing and Abandonment Application (SCA2006-00097), the applicant requested the abandonment of the entire public right-of-way of the segment of Mount Vernon Place, between Maryland Avenue and Monroe Street. In the Mayor and

Council's granting of this request, one-half of the property area within the right-of-way will be joined with the existing County-owned property. Staff has confirmed that the additional land area that the applicant will receive from the abandonment of this public right-of-way will enable the applicant to meet the forest conservation requirements on site. The right-of-way is approximately 60 feet wide, approximately 598 feet in length along the County's property and approximately 637 feet \pm in length along the Courthouse Walk townhouse development property line. The land area of the right-of-way, to be abandoned, is approximately 36,914 square feet in size, i.e., 0.847 acres.

Representatives from Victory Housing Inc. introduced an array of illustrations and drawings supplemented by testimony addressing appropriateness of the use, compatibility with adjacent site uses, building height, number of dwelling units and tree removal and replanting. At the conclusion of the applicant's presentation and discussion of the land use request, persons who wished to speak in opposition came forward as invited by the Board. In November, the Board received evidence and heard additional testimony regarding the balloon test and redesign of the roofline. It also heard closing argument from the applicant. As noted, at the Board's December hearing session, the applicant submitted revised renderings of rooflines and testimony regarding associated construction costs.

OPPOSITION TO THE PROPOSED SPECIAL EXCEPTION

At the September 12, 2009 public hearing, Norman Knopf, a principal with the Law Offices of Knopf & Brown, representing the adjacent homeowners association and several persons from nearby residential neighborhoods spoke in opposition to the proposed Special Exception.

Following Mr. Knopf's opening statement and identification of the concerns about the Special Exception request, Alice Liu, a Courthouse Walk resident, came forward to speak in opposition to the request. Ms. Liu provided both written and oral testimony, which was entered into the record, and also gave a power point presentation, which included photographs, graphical illustrations, and written points that highlighted various topics illustrating her points in opposition to the Special Exception. At the conclusion of her presentation and discussion of her testimony, other persons in attendance were allowed to speak in opposition to the Special Exception request. During the November 2009 continuation of the public hearing, Mr. Knopf and others presented testimony regarding their view of the balloon test and redesign of the roofline.

In addition to the oral testimony provided at the public hearing, written comments were submitted to the public record addressing concerns with the proposed project. Testimony and written comments in opposition to the Special Exception request contended the following: 1) the size of the site is too small to accommodate the proposed mass, height, and residential density of the proposed multi-family senior housing use; 2) the proposed building will be two and one-half stories taller than the neighboring townhomes to the south, ; 3) the proposed site use does not comply with the goals of the City's Master Plan, because it fails to scatter affordable housing throughout the city and fails to protect urban

forest, prevent environmental degradation, and provide green space; 4) the proposed site use will adversely affect the character of the neighborhood, by creating an incompatible mix of land uses and expanding the Town Center into the neighborhood instead of creating a transition; 5) the proposed site use is contrary to the Historic Preservation Ordinance and thus will adversely impact the abutting historic homes located along Fleet Street and Maryland Avenue; 6) the subject site should be preserved as an urban forest; 7) the proposed site use will adversely impact residential property values within the site area; 8) the layback slope as referenced in the City's Zoning Ordinance should apply to the subject site use and is too steep; 9) there is already sufficient affordable housing in the neighborhood; and 10) the establishment and operation of the senior housing use will adversely impact neighboring homeowners' enjoyment of their properties and quality of life.

SUPPORT FOR THE PROPOSED SPECIAL EXCEPTION

During the September and November public hearing a number of residents spoke in favor of the proposed Special Exception. In addition to the testimony presented at the public hearings, there were numerous written comments submitted to the public record supporting the proposed senior housing facility. Testimony and written comments in support of the proposed project noted the following: 1) there is a great need for affordable senior housing in the City; 2) the applicant has an established record of developing and operating quality senior housing communities throughout the metro area; 3) the City's 2002 Master Plan references the need for additional multi-family housing for senior citizens; 4) the site/location is appropriate for senior housing, due to its close proximity to public and private services and the mix of surrounding land uses; and 5) the proposed senior housing apartment will greatly increase the amount of affordable housing located within the neighborhood.

APPLICABLE LAW

A Special Exception is defined in the Rockville Zoning Ordinance as, "a grant of a specific use that would not be appropriate generally or without restriction and must be based upon a finding that certain conditions governing special exceptions as detailed in this Chapter exist, that the use conforms to the Plan, and that the use is compatible with the existing neighborhood." (Rockville Zoning Ordinance, Section 25.03.02.)

The applicant submitted the subject special exception request in accordance with Section 25.07.02. This application has been reviewed in accordance with the procedures found in Section 25.07.09. Thus, in accordance with Sections 25.15.01a and the additional requirements of Section 25.15.02.j of the City of Rockville Zoning Ordinance, the Board of Appeals makes the findings listed below. The Board of Appeals finds that a preponderance of the evidence in the record shows that:

(a) The proposed use does not violate or adversely affect the Master Plan (the Plan), Zoning Ordinance, or any other applicable law;

The Board finds that the applicant's request to develop the site as proposed will not be adverse to the Zoning Ordinance, the Master Plan, or other applicable law. The Rockville Town Center Master Plan designates the site for "Preferred Residential – Single Family Attached." The Proposed Zoning Map of the Master Plan recommended the zoning of the property as "R-30, Multiple Family, Low Density Residential" as implementation of the land use designation. With the adoption of the new Zoning Ordinance, effective on March 16, 2009, however, the property was rezoned to "MXT". Both the "MXT" district, and the earlier proposed "R-30" district, allow for Senior Housing as a Special Exception. Additionally, multi-family dwellings are consistent with the intent of the Master Plan designation and MXT Zone.

The proposed use serves as a transitional use between the medium-high intensity of the City Hall and County Government buildings to the north and east and the adjacent detached and multi-unit residential district to the south and west. This transition is in keeping with the intent of the MXT district, which according to the Zoning Ordinance is:

Intended for areas that are located between medium and high-intensity development and single-unit dwelling detached residential neighborhoods. This zone allows for development of multi-unit and townhouse residential development, and may include neighborhood-serving retail uses.

The MXT district allows for a broad variety of uses, including office, bank and apparel stores and different residential housing types. Multi-unit dwellings are conditional use in the MXT zone, and the Ordinance also allows special exception land uses, if it can be demonstrated that the requested use will not adversely impact neighboring land uses beyond what would otherwise be the impact of uses permitted in the zone by right. For the reasons set forth below, the Board finds that there will be no such impact from the Special Exception.

Section 25.15.02 of the Zoning Ordinance outlines Additional Requirements for Certain Special Exceptions. The applicant sought approval to allow the proposed senior housing facility to exceed the 35 feet height limit of the MXT Zone and to permit a building height of 47 feet. In accordance with Section 25.15.02.j.3(e) of the Zoning Ordinance, the Board of Appeals can grant a maximum height of 50 feet in its consideration of the request. With the exception of the request to exceed the maximum by-right height limit, at this initial stage in the development review process, the land use development proposal as submitted complies with applicable development standards of the Zoning Ordinance and the Master Plan.

The proposed site use and development is found to adhere to requirements of Section 25.13.07.g of the Ordinance (Special Design Regulations for Individual Mixed-Use Zones).

1. Building Location - Buildings in the MXT Zone should be located at or close to the front property line or the build-to-line where established by the Plan.

In accordance with the plans submitted, the site location of the proposed building facility does and will comply with applicable setback requirements of the zone, and is located close to the front property line along Monroe Street.

2. Uses by Floor – The ground floor may contain retail, public-related service, office, or residential uses. The upper floors may be additional retail, office, residential, or a combination of uses.

While the site use is classified as an institutional use, it is residential in operation and character, i.e., a multi-family residential building facility designed for independent senior citizens. As previously noted, the top three levels of the four-story building will contain the vast majority of the facility's one and two-bedroom living units. The ground level of the building facility will contain some living units and the majority of the facility's residential living amenities.

3. Façade – Building facades should be generally consistent with the façade designs in the immediate neighborhood. Roofs should have a pitch compatible with nearby single – unit residential development.

The building is residential in character and is designed with a flat roof with a parapet and several elements that are triangular in nature to “break” the simple flat roof design. Since there is an array of residential uses located primarily to the southeast, south and southwest of the site, there is no true uniform roof pitch predominant throughout. Comparing photos of the existing structures in the immediate neighborhood with the project rendering that the Applicant finally designed, the Board finds that this requirement will be satisfied.

The proposed building's exterior façade walls are not uniform and consist of varying projections and indentions, so as not to create an objectionable continuous, uniform and institutional building façade. The exterior of the building will be constructed of materials which include but may not be limited to the following: manufactured stone siding, shake and horizontal lap siding, tapered fiberglass columns, metal roofing on turrets and porches, and architectural grade fiberglass roof shingles.

4. Fenestration – Fenestration is to be by framed individual windows. Continuous strip windows are discouraged unless they are used to maintain compatibility with existing projects.

The windows as shown on proposed building elevation drawings would be single hung “energy star windows.” In none of the renderings are there any continuous window strips. Windows will be individually framed at each window penetration.

5. Sidewalks - Where sidewalks must be built new or rebuilt as part of redevelopment, they should comply with provisions of Sections 25.17.05.

As a condition of approval, and to achieve compliance with Section 25.17.05, the applicant will upgrade and install new sidewalk along with accompanying planting strips

along Maryland Avenue and Monroe Street and a shared use path along the site's Fleet Street frontage. Ultimate design of all such street frontage improvements will be determined at the project's Site Plan Application stage.

6. Parking – On-site parking must comply with standards and requirements of Article 16. Most parking should be located to the side or rear of the buildings. Structured parking, either above or below grade is preferred and may not be visible from a public street. Any parking structure facades visible from the street must be treated in the same manner as the primary buildings façade. All parking must be screened to prevent vehicle headlights from shining into adjoining residential properties.

The site's proposed parking exceeds the minimum on-site parking requirements of Article 16 of the Zoning Ordinance, i.e., twenty-nine spaces are required and fifty-three spaces were proposed. The proposed surface parking facilities will be located in the side yard area of the facility. Staff recommended the elimination and re-design of the proposed 12 space parking lot located between Lot #1 and #3 for use as an emergency access travelway. As noted, the applicant changed its plans to accommodate this. The building's proposed surface parking will be screened from open site view by trees and other planted materials. Lastly, the parking facilities are oriented to face inward on the site, so as not to allow vehicle headlights of parked cars to shine into adjoining residential properties. Accordingly, the Board finds that the proposed parking complies with the requirements of Article 16.

7. Adjacent to Residential – Where the MXT Zone is opposite or immediately adjacent to any property zoned or recommended in the Master Plan for single-unit detached residential development, the architectural design of buildings adjoining or confronting one-family residential uses should reflect the design and character of the existing residential buildings in the immediate vicinity.

The site is bounded by residential development on two sides, to the east by single family detached residential land uses and to the south by attached single family dwelling units, known as the Courthouse Walk townhouse development. As discussed above, the architecture of the proposed senior housing facility is designed as a multifamily building with varied rooflines and façade changes to minimize the massing, and it uses materials typical to residential buildings nearby. The trash area will be shielded in the under-building parking area, so it is not visible to adjacent homes.

(b) The proposed use at the location selected will not:

i) Adversely affect the health and safety of residents in the area;

The Board finds that the senior housing facility on the subject property will not adversely affect the health and safety of residents in the area.

Based on the Comprehensive Traffic Review (CTR) that was submitted with the special exception request, the site use will not generate greater than 30 peak hour vehicle trips.

Hence, the applicant is only required to provide a project description, analyze the site access and circulation and give a summary of its Transportation Report. No mitigation is required of this project, since it will have a minimal impact on the roadway network surrounding the site. The proposed project trip generation is lower than most of the other uses that would be permitted by right on this 3.47-acre site.

As specified in the site's preliminary Forest Conservation Plan, trees located in the southwestern portion and a portion of the southern most area of the site will be preserved, while those removed elsewhere on site to accommodate the site development will be replaced. The applicant, in compliance with city requirements, will mitigate any stormwater impacts.

ii) Overburden existing and programmed public facilities as provided in Article 20 of the Ordinance and as provided in the adopted Adequate Public Facilities Standards Manual;

The Board finds that the subject special exception will not overburden site area roadways and streets, public schools, or water and sewer services. Certain classes of land use are deemed to have little or no impact on some or all public facilities. As such, the Board of Appeals may waive full compliance with the APFO provisions if it finds that there will be minimal adverse impact resulting from such a waiver. Such a waiver does not exclude any project from the final adequacy check for water and sewer service, if needed for the project.

In accordance with Article 20 and the APFO standards of the Zoning Ordinance, Housing for the Elderly and Physically Handicapped falls in the class of uses eligible for a waiver from the APFO requirements. The applicant requested and the Board grants a waiver of any requirements pertaining to APFO with regard to public school capacity, since no children will reside at the proposed senior housing facility. However, as noted above, the site use is not exempt from the adequacy check for water and sewer services. Thus, at this initial stage in the development review process, the Department of Public Works (DPW) has determined that the applicant will be required to upgrade the water main in Monroe Street between the two existing 8-inch mains at Fleet Street and the Courthouse Walk townhouse community. The subject property would be served from this upgraded water main in Monroe Street. With these noted improvements, to which the applicant has agreed, the site use is not expected to overburden public facilities within the site area.

The applicant's Transportation Report was submitted in accordance with the City's Comprehensive Transportation Review (CTR) analysis for new development projects. The CTR focuses on auto, transit, pedestrian, and bicycle levels of service, as well as on Transportation Demand Management (TDM) programs. The purpose of the CTR process is to ensure that adequate transportation facilities exist during and after a development project.

As previously discussed, the use will not generate greater than 30 peak hour vehicle trips and, therefore, will not significantly alter or change vehicular traffic flow movements in

and around the site area. The facility will have vehicular access onto Monroe Street, and restricted access onto Maryland Avenue, that can be used only by emergency equipment. At the project's site plan approval stage, staff will work with the applicant to determine the ultimate design of street frontage improvements that will be required along Maryland Avenue, Fleet Street, and Monroe Street provided in the conditions to which this special exception grant is issued. Such improvements will include new sidewalks on Monroe Street and Maryland Avenue and a shared use path on Fleet Street. The applicant will also install a bus shelter on Monroe Street at the existing bus stop, adjacent to the historic home located at 107 Fleet Street.

iii) Be detrimental to the use or development of adjacent properties or the neighborhood;

Because the Board finds that the use is consistent with the intent of the Master Plan and MXT Zone in which the site is located, there is no legally cognizable detriment to the use or development of adjacent properties, even though a substantial number of trees in the existing 1.75 acres of forest area of the site will be removed to accommodate the land use as proposed. The applicant's landscape and preliminary forest conservation plans denote that there will be significant replacement and replanting of trees and other vegetative materials, to ensure the site development complies with applicable requirements of the Forest and Tree Preservation Ordinance.

As specified on the applicant's preliminary Forest Conservation and Landscape Plans, the tree cover located in the southwest corner of the site will be retained. The plans also show that the mature tree cover located along the site's southern tract boundary adjacent to the neighboring townhomes, would also be retained. Retention of those tree-covered areas will continue to act as a buffer between the subject site development and the neighboring townhomes to the south. Along that segment of the southern site tract boundary where mature trees and vegetation will have to be removed to accommodate the site development, the applicant will install replacement trees and supplemental plantings, which also serve as a buffer between the proposed site development and neighboring land uses. While it is understood that the replacement trees and plantings may not immediately provide the level of screening that the existing site vegetation currently affords to the neighboring homeowners to the south, such new plantings will in time mature and serve the intended purpose.

In reviewing the Landscape Plan submitted in conjunction with Preliminary Forest Conservation Plan, Forestry staff recommended and the applicant has agreed to the following: revise the tree planting in the rear of the site, reduce the tree planting within the forest save area (proposed Forest Conservation Easement), and provide tree planting on the historic lots. These revisions will not affect the applicant's ability to meet forest conservation on site.

Finally, as specified herein, the Board has required a substantial reduction in the roofline of the development, in response to the concern of residents and to impressions afforded by the balloon test that the Board required. The maximum roofline as measured in

accordance with City ordinances will be 39 feet. In response to this reduction, the applicant has redesigned the building façade to maintain its aesthetic appeal. As specified below, the maximum height of the roofline will be well within the 50 foot maximum that the Board may permit in the MXT Zone.

For the foregoing reasons, the Board finds that the proposed development will not be detrimental to the use or development of adjacent properties.

iv) Change the character of the neighborhood in which the use is proposed, considering services currently required, population density, character, and number of similar uses; and

The four-story senior housing facility will be approximately 97,049 square feet in size and employ masonry and frame construction. As previously noted, the site is bounded to the west and north by City and County governmental land uses, to the east by office and single-family detached dwellings, and south by single family attached dwellings. Due to the building placement along Fleet Street and Maryland Avenue, the site's historic district homes and certain features of the site plan (e.g. keeping much of the massing away from residential development and reducing the roofline), the project will serve as a transition between the site and the City and County governmental land uses located to the north and northwest, and the residential attached dwellings (i.e., townhomes) to the south, as well as buffer these dwellings from the project. Also, based on the range of land uses, i.e., governmental, institutional, and office that are located within the immediate site area, the establishment of the senior housing facility will not change the character of the neighborhood.

As previously discussed, the APFO analysis of this project shows little impact on public services. The applicant must also mitigate impacts by providing infrastructure improvements. For example, DPW staff has requested and the applicant has agreed to study for safe conveyance the existing storm drain outfall located between the project site and the Mount Vernon Place outfall behind Richard Montgomery High School. The results of that study may warrant a public improvement project, e.g., upgrades of the public storm drain system.

The senior housing facility will be located well over 100 feet from the closest residential dwelling to the south or southeast of the subject property. While the proposed four level housing facility will be 39 feet in height at its maximum, it will be well below the 50-foot maximum that the Board may permit. The building height is not viewed to be excessive, due to the 100 foot separation between the building and the nearest residential dwellings, the sloping surface grades of the site, and the forest buffer remaining.

Based on existing land use patterns and current zoning classification of properties within the site area, coupled with the availability of developable land, it is unlikely that approval of the requested Special Exception use would bring about the proliferation of similar land uses within the subject site area. By allowing housing for senior adults in respective

mixed use zones as a Special Exception, the proliferation of similar land uses within a given site area may, in any event, be controlled by the Board. It is important to note that although the subject use will increase population densities within the neighborhood, the impact on utilities, roads and schools will be less than most other permitted uses in the MXT zone.

v) Constitute a nuisance because of traffic, number of people, noise or type of physical activity;

The use as approved will not constitute a nuisance because of traffic or the number of people. As noted, the site use will not generate greater than 30 peak hour trips. The site is located within the Town Center Planning Area, which provides convenient access to shopping, dining, public and private services, and access to public and mass transportation. Within blocks of the proposed facility is access to the Rockville Metro station and County bus lines. Because this facility is being designed for seniors, the trip increase is less than would be experienced with a general population increase. Many residents, depending upon their health and physical abilities, will likely be more reliant upon public transportation or family and friends for their travel needs. There is also no evidence the proposed senior housing facility would generate excessive noise or physical activity deemed to be a nuisance or harmful to the community or surrounding land uses.

3. The proposed use complies with the requirements of the Zoning Ordinance that are applicable thereto, including, but not limited to, the special requirements contained in Section 25.15.02 and the general purposes of the Ordinance contained in Section 25.01.02.

The subject special exception request is submitted in accordance with Section 25.13.03 of the Ordinance. The applicant's submission of the subject special exception request and development proposal reflects the applicant's compliance with this fundamental requirement of the Ordinance. The site use complies with applicable requirements of the Adequate Public Facilities Ordinance as well.

Per Section 2.15.02.j.2 of the Ordinance, the Board must make the additional finding that the proposed site use has adequate accessibility to, or provides on site, public transportation, medical services, shopping areas, recreational, and other community services frequently used by residents of such use.

As previously noted, the site is located within the Town Center Planning Area, and the Board finds that the site allows for ready access to shopping, physician services, public transportation, and an array of public and private services.

Section 21.15.02.j.3 of the Ordinance requires the use comply with the following Special Development and Use Requirements:

(a) *Minimum Lot Size – Development must be on a record lot of at least two (2) acres. The subject property is approximately 3.47 acres (151,197 square feet) in size.*

(b) *Minimum Street Frontage* – The lot must have at least 100 feet of frontage on a public street. The subject site has in excess of 300 feet of frontage on Maryland Avenue alone.

(c) *Setbacks* – All structures on the site must be set back at least as follows:

(i) *Front Yard*: 50 feet, except for projects in the MXT Zone, the setback may be the minimum required in the zone;

The facility has a front yard setback of 31 feet; the minimum setback required is 10 feet in the site's MXT Zone.

(ii) *Side and rear yards*; Twice the minimum in the zone.

The building has a side setback of 59 feet; the minimum setback required is 20 feet in the MXT Zone. The building has a rear yard setback of 67 feet; the minimum setback required is 40 feet. Note, the setback includes the now abandoned Mount Vernon Place unimproved public right-of-way.

(d) *Maximum Lot Coverage*: Not applicable to the MXT Zone.

(e) *Building Height*: Building height is normally limited to the height allowed in the zone. Additional height up to 50 feet may be allowed by the Board of Appeals in a mixed-use zone without the requirement of additional setbacks.

Under this provision the applicant sought Board of Appeals approval to allow the proposed building facility to be constructed at 47 feet in height. The Board has allowed 39 feet.

BOARD OF APPEALS DECISION

All comments and concerns raised by residents and reflected in the record were taken into consideration. Based on the foregoing findings and reasoning, the Board concludes that there has not been a sufficient showing and the evidence and testimony is not that the character of the community would be changed, that any facilities would be adversely affected or unduly burdened, or that there is any other consideration within the Board's responsibilities warranting denial of the Special Exception. The elderly housing facility represents a true transitional land use between the neighboring townhomes to the south, single family detached dwellings and office uses to the east, and governmental and institutional land uses to the west and north.

Although this site has been unused for many years, it is Montgomery County property in a transition zone of medium-high use to residential use and also has several tall buildings close to the property. The applicant has also in the four-month hearing process reduced the height of the building by agreeing to a flat roofline with some decorative elements to

“break” the roofline. The building also has architectural elements to “break” its straight walls. The proposed senior housing for independent elderly residents is also needed to provide affordable housing opportunities for elderly residents within the subject site area of the City of Rockville.

Accordingly, the Board of Appeals of the City of Rockville hereby grants the Special Exception SPX2009-00378, and the applicant shall be bound by the application, testimony, evidence and information presented in support of the application regarding the use, operation, site layout, and design of the project. In addition, the Board’s grant is subject to the conditions set forth below and elsewhere in this decision:

1. Site improvements and building construction activity must be conducted in substantial accordance with the site development and building plans as submitted.
2. The site development plan shall be amended to clearly denote/identify location of resident, staff, and visitor parking spaces.
3. The proposed twelve (12)-space parking lot located within the site’s historic district will be eliminated and shall be redesigned as an access way for emergency vehicular access via Maryland Avenue.
4. The applicant will work with the Fire Marshal to determine appropriate signage and/or other improvements needed to clearly demarcate the “End of Fire Department Access,” e.g., the area (as shown on the accompanying site plan) that will allow fire department vehicular access via Maryland Avenue.
5. Prior to the project’s Site Plan Approval stage, the applicant and property owner will work with the County agency which has oversight over its structured parking facilities, to determine the feasibility of allowing employees of the proposed senior housing facility, to access and park their personal vehicles in the neighboring County-owned parking garage located at the corner of Fleet Street and Monroe Street. Such an agreement would enable the applicant to pick up the twelve (12) on-site parking spaces eliminated with the removal of the proposed twelve (12) space parking facility located within the site’s historic district.
6. The August 5, 2009 “Transportation Report” must be revised as follows:
 - a. Remove the verbiage “the Bicycle Master Plan recommends a width of ten (10) feet.”
 - b. Remove the verbiage, “However, the project area does not abut Fleet Street and, therefore, is not within the scope of this Transportation Report.” Replace it with a statement that indicates that it is within the scope of the project.

7. Site refuse and trash collection must be conducted in accordance with applicable City Code and the County's Noise Ordinance.
8. The applicant will upgrade the existing water main located in Monroe Street between the two existing 8-inch mains at Fleet Street and Courthouse Walk.
9. The applicant must comply with the Stormwater Management (SWM) concept plan conditionally approved on April 23, 2009. If final engineering plans and a permit for construction are not approved and issued by May 4, 2010, the concept plan approval may become void. The site must then comply with the new State of Maryland stormwater regulations.
10. The applicant must study the existing storm drain outfall for safe conveyance of stormwater between the project site and the Mount Vernon Place outfall behind Richard Montgomery High School. The results of this study may require an upgrade at the applicant's expense, to the public storm drain system. This study must be completed during the detailed engineering review.
11. The applicant will upgrade and install new sidewalks, together with accompanying planting strips, along Maryland Avenue and Monroe Street and a shared use path along the site's Fleet Street frontage. Ultimate design of all such street frontage improvements will be determined at the project's Site Plan Application stage.
12. A Final Forest Conservation Plan shall be submitted in connection with the Site Plan and reflect the following revisions to the Preliminary Forest Conservation Plan:
 - a. Reduce and revise the proposed planting within the forest save/forest conservation easement area to reflect the locations of the existing trees.
 - b. Provide tree planting on the lots within the Historic District.
13. The applicant shall work with the City Forester and Planning staff to refine the landscaping in the rear of the building, i.e., specific site locations, species type, and number of proposed plantings.
14. All forest conservation and significant tree replacement requirements shall be met on-site in accordance with the plans submitted.
15. All proposed outdoor/exterior site lighting must be installed in accordance with applicable requirements of the City's Landscaping, Screening, and Lighting Manual. The location of all lights should be clearly denoted on the site plan, and a lighting plan showing that lights do not create glare or

Board of Appeals

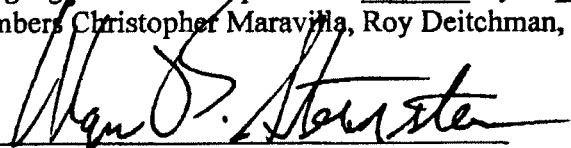
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January 15, 2010

excessive light spillage onto neighboring land uses must be submitted for review and approval by the Chief of Planning as part of the project's Site Plan Application.

16. The applicant shall make, prior to the issuance of any building permit, a monetary contribution of \$6,500 for the implementation of one bus shelter to be located nearby to the subject site. This contribution will be incorporated into the Bus Stop Beautification CIP project. The applicant will also provide a Public Improvement Easement for the bus shelter and concrete pad along the applicant's Monroe Street frontage. The easement must be recorded prior to issuance of the building permit.
17. The roof height shall be 39 feet or less, measured from the street grade elevation for Monroe Street opposite the middle of the front of the building to the highest point of roof surface of the flat roof.

The foregoing Amended Decision is hereby adopted by the Board of Appeals and is being signed in counterparts this 15th day of January, 2010, by Board members Christopher Maravilla, Roy Deitchman, and Alan Sternstein.


 Alan Sternstein, Chairperson

 Roy Deitchman

 Christopher Maravilla

Section 25.07.09 of the City of Rockville Zoning Ordinance requires that a **site plan (Level 2) must be filed within six months of the date of the Board's decision or approval shall expire**. However, if the applicant can show good cause the Board may grant two (2) time extensions of the application expiration date, each not to exceed six (6) months respectively.

/cdc
 Proposed Site Vicinity Map

Board of Appeals
Amended Decision SPX2009-00378 -17 of 18-

January 15, 2010

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Alan Sternstein, Chairperson

Roy Deitchman
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Board of Appeals

Amended Decision SPX2009-00378 -17 of 18-

January 15, 2010

ATTACH C

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17. The roof height shall be 39 feet or less, measured from the street grade elevation for Monroe Street opposite the middle of the front of the building to the highest point of roof surface of the flat roof.

The foregoing Amended Decision is hereby adopted by the Board of Appeals and is being signed in counterparts this 19th day of January, 2010, by Board members Christopher Maravilla, Roy Deitchman, and Alan Sternstein.

Alan Sternstein, Chairperson

Roy Deitchman



Christopher Maravilla

Section 25.07.09 of the City of Rockville Zoning Ordinance requires that a site plan (Level 2) must be filed within six months of the date of the Board's decision or approval shall expire. However, if the applicant can show good cause the Board may grant two (2) time extensions of the application expiration date, each not to exceed six (6) months respectively.

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Proposed Site Vicinity Map

SITE VICINTY MAP

